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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,053	02/02/2005	Stanley George Bonney	P33090 USW	7571

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EXAMINER

JACYNA, J CASIMER

ART UNIT	PAPER NUMBER
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3754

MAIL DATE	DELIVERY MODE
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06/22/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/523,053

Applicant(s)

BONNEY, STANLEY GEORGE

Examiner

J. Casimer Jacyna

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-40 are rejected under 35 U.S.C. 102(b) as being anticipated by German DE 100 17 438. As noted in the PCT preliminary examination report dated 9/20/2004 DE/438 discloses a dispenser including a storage chamber 2, an outlet orifice 13, 35, a metering chamber 7, an outlet opening 18, a bleed arrangement 22 and a dispensing mechanism 3, 31 that functions as claimed as explained in the report.

3. Claims 1-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Jouillat et al. (5,024,355). As noted in the PCT search report dated 4/12/2003, Jouillat (French 2,645,509 in the report) discloses a dispenser including a storage chamber 1, an outlet orifice 24, a metering chamber 11 as shown in figures 2 or 9, an outlet opening 35, a bleed arrangement 11' or 11a, and a dispensing mechanism 3, 31, 2.

4. Claims 1-16 and 18-40 are rejected under 35 U.S.C. 102(e) as being anticipated by Voellmicke et al. (7,008,433). Voellmicke discloses a dispenser including a storage chamber 3, an outlet orifice 27, a metering chamber 21, an outlet opening at the base of 27, a bleed arrangement 5, 25, and a dispensing mechanism 35, 39 wherein the device can take various positions as shown at A, C, B2 and B3.

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5. Claims 1-16 and 18-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Spaude et al. (4,077,494). Spaude discloses a dispenser including a storage chamber 2, an outlet orifice 45, a metering chamber 39, an outlet opening 34, a bleed arrangement 42, and a dispensing mechanism 41, 38. The dispenser of Spaude is capable of being used in the manner claimed regardless of whether or not Spaude discloses the actual positions. A user could push piston 40 past opening 42 to isolate a metered dose based on the height of piston 40 above the housing 28 and then dispense as claimed. Whether or not the apparatus is used in this manner depends on a future act of use and not on any claimed structural difference.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over German DE 100 17 438 on view of Davison (6,062,212). DE discloses a dispenser substantially as claimed but does not disclose the use of a vibrating element. However, Davison teaches another dispenser having a vibrating element 10 for the purpose of atomizing the fluid. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the dispenser of DE with a vibrator as, for example, taught by Davison in order to atomize the fluid.

8. Claims 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jouillat et al. (5,024,355) in view of Davison (6,062,212). As noted in the PCT search

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report dated 4/12/2003, Jouillat (French 2,645,509 in the report) discloses a dispenser substantially as claimed but does not disclose the use of a vibrating element. However, Davison teaches another dispenser having a vibrating element 10 for the purpose of atomizing the fluid. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the dispenser of DE with a vibrator as, for example, taught by Davison in order to atomize the fluid.

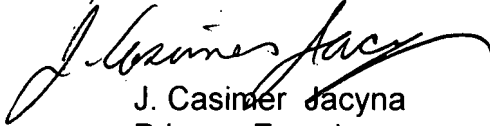
9. The references cited on the PTO-892 teach other metering dispensers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Wed. thru Fri. 9AM-7PM, Mon. 7AM-1PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



J. Casimer Jacyna
Primary Examiner
Art Unit 3754

CJ